IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Punma Ram & ors. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No.742/2007

...

Date of Order: July 16, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. J.S. Choudhary, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

Heard learned counsel for the parties. Perused the order impugned.

In my view, the trial Court was justified in passing the impugned order placing reliance on a Three Judge Bench decision of the Hon'ble Supreme Court in State of Orissa Vs. Debendra Nath Padhi, JT 2004 (10) SC 303, in which the Hon'ble Supreme Court held that at the time of framing the charge or taking cognizance, the accused has no right to produce any material. The Apex Court further observed that the only right the accused has at that stage is of being heard and nothing beyond it. The Apex Court further held as under:-

> "At the stage of framing the charge roving and fishing inquiry is impermissible. It is well-settled that

> at the stage of framing of charge, the defence of the accused cannot be put forth. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the police."

In this view of the matter, the criminal miscellaneous petition is dismissed. However, it will be open for the petitioners to move before the trial Court for production of the documents after framing of the charge and when the matter is posted for evidence.

(H.R. PANWAR), J.

mcs